



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 5, 1998

Mr. Roland Castañeda  
General Counsel  
Dallas Area Rapid Transit  
P. O. Box 660163  
Dallas, Texas 75266-0163

OR98-2613

Dear Mr. Castañeda:

You ask this office to consider the applicability of section 552.107(1) of the Government Code to portions of the information at issue in Open Records Letter No. 98-1521 (1998). Your request was assigned ID# 119336.

Open Record Letter No. 98-1591 (1998), which involved a request for certain attorney billing statements, determined that the Dallas Area Rapid Transit ("DART") may withhold from disclosure portions of the statements based on sections 552.103 and 552.107(1) of the Government Code. With regard to the section 552.103 determination, you now inform us that, as the litigation has concluded, section 552.103 is inapplicable. Thus, you urge that section 552.107(1) now applies to certain information "because it is legal advice and/or constitutes client confidences and is privileged."

Section 552.107(1) of the Government Code states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 at 5 (1990). To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications;

“unprivileged information” as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 at 5; 462 at 13-14 (1987).


Thus, this exception protects only the essence of the confidential relationship between attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 at 5. Consequently, a governmental body may not withhold fee bills in their entirety under this exception, but may only withhold information about the details of the substance of communications between the attorney and the client.

That section 552.107(1) protects only the details of the substance of attorney-client communications means that the exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). Consequently, if a governmental body seeks to withhold attorney fee bills under section 552.107(1), the governmental body must identify the portions of the bills that reveal client confidences or attorney advice. *See* Open Records Decision No. 589 (1991). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See id.*

We have reviewed the bills. We conclude that DART has failed to establish the applicability of section 552.107(1) to the information. Consequently, DART may not withhold the information from the requestor based on section 552.107(1).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings  
Deputy Chief  
Open Records Division

KHH/mjc

Ref.: ID# 119336

Enclosures: Submitted documents

cc: Mr. Lary Penelope  
11536 W. Ricks Circle  
Dallas, Texas 75230  
(w/o enclosures)